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SOVEREIGN SURGICAL HOLDINGS, L.P.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOVEREIGN SURGICAL HOLDINGS, L.P, a Delaware Limited Partnership,

Plaintiff,

vs.

DUAL DIAGNOSIS TREATMENT CENTER, INC., a California Corporation,

Defendant.

Case No.

COMPLAINT FOR:

1. **FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION [15 U.S.C. § 1125(a)]**
2. **CANCELLATION OF FEDERAL TRADEMARK REGISTRATION [15 U.S.C. §§ 1064 and 1119]**
3. **UNFAIR BUSINESS PRACTICES [CAL. B&P CODE § 17200, *et seq.*]**
4. **COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff Sovereign Surgical Holdings, L.P. ("Plaintiff") alleges as follows against defendant Dual Diagnosis Treatment Center, Inc. ("Defendant"):

NATURE OF THE CASE

1. Plaintiff seeks injunctive and monetary relief in this action for false designation of origin, trademark registration cancellation, statutory unfair competition, and common law unfair competition and trademark infringement with regard to Plaintiff's trademark SOVEREIGN HEALTHCARE (the "SOVEREIGN HEALTHCARE MARK"). Plaintiff is a healthcare company that partners with physicians and health systems to develop and execute strategic healthcare plans. Plaintiff has used the SOVEREIGN HEALTHCARE MARK since at least as early as 2005. Defendant operates medical rehabilitation centers using the mark SOVEREIGN HEALTH (the "SOVEREIGN HEALTH MARK"), a mark that is confusingly similar to the SOVEREIGN HEALTHCARE MARK. Defendant has violated, and continues to violate, the Trademark Act of 1946 as amended, 15 U.S.C. section 1051 *et seq.* (the "Lanham Act"), and California state law through its unauthorized use of a mark confusingly similar to the SOVEREIGN HEALTHCARE MARK that is likely to cause, ***and has already caused***, consumer confusion as to the source of Defendant's services.

PARTIES

2. Plaintiff is a limited partnership organized and existing under the laws of the State of Delaware that is authorized to do business, and is doing business, in California. Plaintiff's principal place of business is at 27271 Las Ramblas, Suite 350, Mission Viejo, CA 92691.

3. On information and belief, Defendant is a California corporation with its principal place of business at 1211 Puerta Del Sol, Suite 200, San Clemente, CA 92673.

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JURISDICTION AND VENUE

4. This action arises under the Lanham Act, 15 U.S.C. section 1125 *et seq.*, and under statutory and common law unfair competition. This Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 1331 and 1338, and 15 U.S.C. section 1121 because Plaintiff's claims arise, in part, under the Lanham Act and federal trademark law. This Court has supplemental jurisdiction pursuant to 28 U.S.C. sections 1338(b) and 1367 over Plaintiff's claims arising under the laws of the State of California.

5. This Court has personal jurisdiction over Defendant because it transacts business in the State of California and has its principal place of business in Southern California.

6. Venue is proper in the Central District of California under 28 U.S.C. section 1391(b) and (c) because, on information and belief, Defendant resides in this judicial district, and a substantial part of the events, omissions and acts that are the subject matter of this action occurred within the Central District of California.

PLAINTIFF'S SOVEREIGN HEALTHCARE MARK

7. Since at least as early as 2005, and before Defendant used any similar mark, Plaintiff has continuously, prominently and exclusively used the SOVEREIGN HEALTHCARE MARK to denote the source of its healthcare services. During this period, Plaintiff has committed significant amounts of time, effort and money to developing a widely respected reputation in the healthcare industry through which the SOVEREIGN HEALTHCARE MARK has acquired secondary meaning indicating Plaintiff as the source of its high-quality services. Thus, before the acts complained of in this Complaint, members of the general consumer population recognized the SOVEREIGN HEALTHCARE MARK as an exclusive source identifier for services provided by Plaintiff.

8. Plaintiff has provided substantial services under the SOVEREIGN HEALTHCARE MARK and has extensively advertised and marketed its services in

California and Arizona. Plaintiff has widely promoted and marketed its goods in numerous and diverse advertising media to promote the strength and renown of its SOVEREIGN HEALTHCARE MARK. Plaintiff has achieved a high level of commercial success in selling services under the SOVEREIGN HEALTHCARE MARK and has built a valuable reputation and substantial goodwill.

9. Through Plaintiff's extensive efforts, the SOVEREIGN HEALTHCARE MARK has been established as a unique source identifier indicating Plaintiff as the origin of the services. Based on Plaintiff's extensive advertising, marketing and sales of healthcare services under its SOVEREIGN HEALTHCARE MARK, the SOVEREIGN HEALTHCARE MARK has acquired secondary meaning in the minds of the purchasing public such that consumers identify services sold under the SOVEREIGN HEALTHCARE MARK as originating from only one source -- Plaintiff.

10. The SOVEREIGN HEALTHCARE MARK and the goodwill of Plaintiff's business in connection thereto, are valid and subsisting and remain in full force and effect and have never been abandoned.

11. The SOVEREIGN HEALTHCARE MARK is extremely valuable to Plaintiff. Plaintiff will suffer irreparable harm if Defendant or other third parties are permitted to sell related goods or services under the SOVEREIGN HEALTHCARE MARK or confusingly similar marks such as the SOVEREIGN HEALTH MARK.

DEFENDANT'S INFRINGING ACTIVITIES

12. After Plaintiff's adoption and use of the SOVEREIGN HEALTHCARE MARK, Defendant began using the SOVEREIGN HEALTH MARK in connection with its medical rehabilitation services. Defendant uses the SOVEREIGN HEALTH MARK in conducting and promoting its business and services, including, without limitation, by displaying the SOVEREIGN HEALTH MARK on its website, building signage, billboards and radio advertisements.

13. On information and belief, and unbeknownst to Plaintiff, Defendant filed

an application to register the SOVEREIGN HEALTH MARK in International Class Number 44 ("Addiction treatment services; medical services, namely, treatment, continuing care, recovery management, and monitoring in the field of addiction management; and providing cognitive behavior therapy for treatment of addiction") on or about April 26, 2013. According to the United States Patent and Trademark Office's records, Defendant's reported date of first use of the mark was December 4, 2008—at least three years after Plaintiff began using the SOVEREIGN HEALTHCARE MARK. Upon information and belief, the SOVEREIGN HEALTH MARK was registered on December 10, 2013, U.S. Registration No. 4,447,659.

14. Defendant's conduct as alleged herein has caused and is causing actual consumer confusion, including, without limitation, confusion that is damaging Plaintiff's reputation and the goodwill associated with the SOVEREIGN HEALTHCARE MARK. For example, on March 1, 2017, Plaintiff received an email from an angry consumer forwarding an email from Defendant and stating: "Your 'company' has contacted me several times at off hours from different numbers. All illegal activity. Prerecorded message. Cease and desist. Try acting like a legitimate company . . . ." Additionally, Plaintiff has received on average one to two calls per week wherein consumers express confusion between Plaintiff and Defendant or complain to Plaintiff about Defendant's services, mistakenly believing that Plaintiff is associated with Defendant. Furthermore, on March 30, 2017, a woman walked into Plaintiff's office looking for a job at "your San Clemente rehab facility," which is a clear reference to Defendant's business. Plaintiff has also received complaints from people residing in the community asking why Plaintiff is putting drug addicts into homes within their community.

15. Defendant's advertising, sale and offering for sale of services under the SOVEREIGN HEALTH MARK is not authorized or approved by Plaintiff.

16. On information and belief, Defendant's activities complained of herein constitute willful and intentional infringement of the SOVEREIGN HEALTHCARE

MARK.

17. Defendant's use of the SOVEREIGN HEALTH MARK is likely to cause, and has already caused, confusion in the minds of the consuming public, and has damaged and is damaging Plaintiff by creating the false impression that Defendant is associated with Plaintiff, when it is not.

FIRST CLAIM FOR RELIEF

False Designation of Origin and Unfair Competition

[15 U.S.C. § 1125(a)]

18. Plaintiff repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 17 above, inclusive, as though fully set forth herein.

19. After Plaintiff began using the SOVEREIGN HEALTHCARE MARK in commerce, Defendant began using the SOVEREIGN HEALTH MARK, a mark confusingly similar to Plaintiff's SOVEREIGN HEALTHCARE MARK, in connection with its medical rehabilitation services.

20. Defendant uses the confusingly similar mark in interstate commerce and, on information and belief, has done so with the deliberate intent of capitalizing and trading on the goodwill and reputation of Plaintiff.

21. Defendant's use in commerce of the confusingly similar SOVEREIGN HEALTH MARK will tend to cause and has already caused the relevant public and trade to believe erroneously that Defendant's services are associated with Plaintiff.

22. Defendant's use in commerce of the confusingly similar SOVEREIGN HEALTH MARK in connection with its services constitutes a false designation of the origin and/or sponsorship of such services and falsely describes and represents such services.

23. By its acts as alleged herein, Defendant has falsely designated and represented services sold in commerce in violation of 15 U.S.C. section 1125(a) and has otherwise used the goodwill of Plaintiff to sell Defendant's own services and has

otherwise competed unfairly with Plaintiff.

24. On information and belief, Defendant is now committing the acts complained of above with full knowledge that its acts are unlawful.

25. Defendant has displayed a willful course of conduct toward appropriation and destruction of Plaintiff's rights in and to the SOVEREIGN HEALTHCARE MARK.

26. Defendant's wrongful acts and conduct as alleged herein have permitted or will permit it to generate substantial sales and profits on the strength of Plaintiff's advertising, sales, consumer recognition, and goodwill in connection with the SOVEREIGN HEALTHCARE MARK.

27. As a result of Defendant's wrongful acts alleged herein, Plaintiff has suffered and will continue to suffer monetary damage in an amount not thus far determined.

28. On information and belief, Defendant's acts of unfair competition by false designation of origin in violation of the Lanham Act have caused financial injury and damages to Plaintiff and have been willful, making this an exceptional case within the meaning of the Lanham Act, 15 U.S.C. section 1117, thereby entitling Plaintiff to damages, attorneys' fees, and costs.

29. Defendant's acts and conduct constitute unfair competition that has caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff's goodwill and business reputation.

30. Plaintiff is entitled to damages as a result of Defendant's actions and conduct and, because such damages alone do not provide Plaintiff with an adequate remedy at law, Plaintiff is entitled to injunctive relief.

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SECOND CLAIM FOR RELIEF

Cancellation of Federal Trademark Registration No. 4,447,659

[15 U.S.C. §§ 1064 and 1119]

31. Plaintiff repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 30 above, inclusive, as though fully set forth herein.

32. Plaintiff owns the SOVEREIGN HEALTHCARE MARK and the goodwill associated therewith. The SOVEREIGN HEALTHCARE MARK has acquired secondary meaning and designates Plaintiff as the source of services advertised, marketed, sold or used in connection with the SOVEREIGN HEALTHCARE MARK.

33. Plaintiff is the senior user of the SOVEREIGN HEALTHCARE MARK as it began use of the mark in commerce prior to Defendant's first use of its confusingly similar SOVEREIGN HEALTH MARK.

34. As set forth above, Defendant's use of the federally registered SOVEREIGN HEALTH MARK creates a likelihood of confusion with Plaintiff's senior SOVEREIGN HEALTHCARE MARK. As a result, Plaintiff has been and continues to be harmed by Defendant's SOVEREIGN HEALTH MARK registration.

35. Accordingly, Defendant's U.S. Registration No. 4,447,659 for the SOVEREIGN HEALTH MARK should be cancelled pursuant to 15 U.S.C. §§ 1064 and 1119.

THIRD CLAIM FOR RELIEF

Unfair Business Practices

[CAL. B&P CODE § 17200, *et seq.*]

36. Plaintiff repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 35 above, inclusive, as though fully set forth herein.

37. Defendant's advertising, selling and offering for sale services under the

confusingly similar SOVEREIGN HEALTH MARK as described above constitutes unlawful, unfair, or fraudulent business practices, and unfair, deceptive, untrue or misleading advertising in violation of section 17200 of the California Business and Professions Code.

38. The unlawful conduct alleged herein has caused Plaintiff, and unless enjoined will continue to cause Plaintiff, irreparable harm. Plaintiff has no adequate remedy at law and is entitled to preliminary and permanent injunctive relief. Plaintiff is also entitled to restitution of Defendant's ill-gotten gains.

FOURTH CLAIM FOR RELIEF

Common Law Unfair Competition and Trademark Infringement

39. Plaintiff repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 38 above, inclusive, as though fully set forth herein.

40. Defendant's actions and conduct as alleged herein constitute unfair competition under California common law.

41. Defendants' actions and conduct in adopting and using the confusingly similar SOVEREIGN HEALTH MARK in California constitutes trademark infringement under California common law.

42. Defendant has caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff, including but not limited to injury to Plaintiff's goodwill and business reputation.

43. Plaintiff has no adequate remedy at law, and is being irreparably damaged by Defendant's acts in violation of California common law, entitling Plaintiff to injunctive relief.

44. Defendant's actions and conduct as alleged herein are malicious and fraudulent and entitle Plaintiff to punitive damages under Civil Code section 3294.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order and judgment against Defendant as follows:

1. That Defendant and its officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from using the SOVEREIGN HEALTH MARK or any other name or mark confusingly similar to the SOVEREIGN HEALTHCARE MARK, either alone or in combination with other words or symbols, in the marketing, sales, promotion, advertising, identification, or in any other manner in connection with medical rehabilitation or healthcare services in the United States;

2. That Defendant, and each of its officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from using the SOVEREIGN HEALTH MARK or any other name or mark confusingly similar to the SOVEREIGN HEALTHCARE MARK, in any form or manner that would tend to identify or associate Defendant's business or services with Plaintiff in the marketing, sales, promotion, advertising, identification, or in any other manner in connection with rehabilitation or healthcare services in the United States;

3. That Defendant, and each of its officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from representing to anyone, either orally or in writing, that their business or services are affiliated with Plaintiff in

any way or are approved by Plaintiff;

4. For an order requiring Defendant to deliver to Plaintiff's attorney within thirty (30) days after the entry of any preliminary or permanent injunction, to be impounded or destroyed by Plaintiff, all literature, signs, labels, prints, packages, wrappers, containers, advertising materials and any other items in its possession or control that contain the SOVEREIGN HEALTH MARK or any other name or mark confusingly similar to the SOVEREIGN HEALTHCARE MARK, either alone or in combination with other words and symbols;

5. For an order requiring Defendant to remove from its websites, including, without limitation, www.sovhealth.com, within thirty (30) days after the entry of any preliminary or permanent injunction, all instances of the SOVEREIGN HEALTH MARK or any other name or mark confusingly similar to the SOVEREIGN HEALTHCARE MARK;

6. For an order requiring Defendant to instruct, within thirty (30) days after the entry of any preliminary or permanent injunction, any third-party website that advertises Defendant's services, to cease using the SOVEREIGN HEALTH MARK or any other name or mark confusingly similar to the SOVEREIGN HEALTHCARE MARK in connection with Defendant's services;

7. For an order requiring Defendant to file with the Clerk of this Court and serve Plaintiff, within thirty (30) days after the entry of any preliminary or permanent injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with 1 through 6 above;

8. For an order cancelling Defendant's registration for the SOVEREIGN HEALTH MARK, U.S. Registration No. 4,447,659;

9. For an award of Plaintiff's damages according to proof at trial;

10. For an award of three times Plaintiff's damages or Defendant's profits in view of the intentional and willful nature of Defendant's acts, pursuant to 15 U.S.C. section 1117;

11. For an order requiring Defendant to account for and pay to Plaintiff all gains, profits and advantages derived by Defendant from the unlawful activities alleged herein, and/or as a result of unjust enrichment;

12. For an award of punitive damages according to proof;

13. For an award of reasonable attorneys' fees under 15 U.S.C. section 1117;

14. For an award of pre and post-judgment interest at the highest rate allowed by law;

15. For an award of costs and disbursements incurred in this action; and

16. For such further relief as this Court shall deem just and proper.

Dated: April 3, 2017

RUTAN & TUCKER, LLP
MICHAEL ADAMS
PROUD USAHACHAROENPORN

By: /s/ Michael Adams
Michael Adams
Attorneys for Plaintiff
SOVEREIGN SURGICAL HOLDINGS, L.P.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial in this action.

Dated: April 3, 2017

RUTAN & TUCKER, LLP
MICHAEL ADAMS
PROUD USAHACHAROENPORN

By: /s/ Michael Adams
Michael Adams
Attorneys for Plaintiff
SOVEREIGN SURGICAL HOLDINGS, L.P.